

AMENDED IN ASSEMBLY AUGUST 5, 2004

AMENDED IN SENATE MAY 11, 2004

AMENDED IN SENATE MAY 5, 2004

AMENDED IN SENATE APRIL 22, 2004

AMENDED IN SENATE APRIL 1, 2004

SENATE BILL**No. 1753**

Introduced by Senators Denham and Battin

(Coauthors: Senators Ackerman, Johnson, and Oller)

(Coauthors: Assembly Members Bates, Bogh, Cogdill, Daucher, Dutton, Harman, Shirley Horton, La Malfa, Maze, Pacheco, and Spitzer)

February 20, 2004

An act to amend Sections 11011 and 11011.5 of, *to amend and renumber Section 11011.3 of, to add Section 11011.3 to*, and to repeal and add Sections 11011.1, ~~11011.3~~, and 11011.4 of, the Government Code, relating to state property.

LEGISLATIVE COUNSEL'S DIGEST

SB 1753, as amended, Denham. Surplus state property.

(1) Existing law requires the Department of General Services, whenever any land is reported as excess, to determine whether or not the use of the land is needed by any other state agency. If the department determines that the use of the land is not needed by any other state agency and when authority is granted for the sale or other disposition of the land, the department may sell or otherwise dispose of the land pursuant to the authorization, upon the terms and conditions and subject

to reservations and exceptions as the department may deem to be for the best interests of the state.

This bill would require the department to determine whether or not the use of the land is needed by any other state agency within 60 days of that land being reported as excess. The bill would require the department, if it determines that the land is needed by another state agency, to transfer the jurisdiction of the land to the other state agency within 6 months after that determination and upon the terms and conditions as it may deem to be for the best interests of the state. This bill would also require the department, or any state agency authorized by the department, subject to the provisions described in (2), below, to issue an invitation to bid to real estate brokers, as provided, to sell that land if that land is either determined not to be needed by any other state agency, or, in the event the land is determined to be needed by any other state agency, the transfer to the other state agency has not occurred within that 6-month period.

(2) Existing law requires that land that has been declared surplus by the Legislature and that is not needed by any state agency be offered to local governmental agencies for specified purposes, including schools, park and recreation, open space, low- or moderate-income housing, or other purposes of broad public benefit, or, under specified conditions, that the land be offered to the individual from whom it was acquired. Existing law authorizes the department to transfer surplus state land at no cost or at a cost below fair market value to local governmental agencies if specified conditions apply.

This bill would revise the provisions relating to the use of the land for school purposes, park and recreation or open-space purposes, or for low- or moderate-income housing, as specified, and would repeal the provisions relating to the use of the land for other public purposes.

(3) *This bill would become operative on July 1, 2005.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11011 of the Government Code is
2 amended to read:

3 11011. (a) On or before December 31st of each year, each
4 state agency shall make a review of all proprietary state lands
5 (other than tax-deeded land, land held for highway purposes, lands

1 under the jurisdiction of the State Lands Commission, land which
2 has escheated to the state or which has been distributed to the state
3 by court decree in estates of deceased persons, and lands under the
4 jurisdiction of the State Coastal Conservancy) over which it has
5 jurisdiction to determine what, if any, land is in excess of its
6 foreseeable needs and report thereon in writing to the Department
7 of General Services. These lands shall include, but not be limited
8 to, the following:

9 (1) Land not currently being utilized, or currently being
10 underutilized, by the state agency for any existing or ongoing state
11 program.

12 (2) Land for which the state agency has not identified any
13 specific utilization relative to future programmatic needs.

14 (3) Land not identified by the state agency within its master
15 plans for facility development.

16 (b) Jurisdiction of all land reported as excess shall be
17 transferred to the Department of General Services, when requested
18 by the director thereof, for sale or disposition under this section or
19 as may be otherwise authorized by law.

20 (c) The Department of General Services shall report to the
21 Legislature annually, the land declared excess and request
22 authorization to dispose of the land by sale or otherwise.

23 (d) The Department of General Services shall review and
24 consider reports submitted to the Director of General Services
25 pursuant to Section 66907.12 of the Government Code and Section
26 31104.3 of the Public Resources Code prior to recommending or
27 taking any action on surplus land, and shall also circulate the
28 reports to all agencies which are required to report excess land
29 pursuant to this section. In recommending or determining the
30 disposition of surplus lands, the Director of General Services may
31 give priority to proposals by the state which involve the exchange
32 of surplus lands for lands listed in those reports.

33 (e) Except as otherwise provided by any other provision of law,
34 whenever any land is reported as excess pursuant to this section,
35 the Department of General Services shall determine whether or not
36 the use of the land is needed by any other state agency within 60
37 days of that land being reported as excess. If the Department of
38 General Services determines that any land is needed by any other
39 state agency it shall, within six months after that determination,
40 transfer the jurisdiction of this land to the other state agency upon

1 the terms and conditions as it may deem to be for the best interests
2 of the state.

3 (f) Subject to Section 11011.1, when authority is granted for
4 the sale or other disposition of lands declared excess, and the
5 Department of General Services has determined that the use of the
6 land is not needed by any other state agency, or, in the case of
7 excess land that the department determines is needed by another
8 state agency, if that land is not transferred to another state agency
9 within the six-month time period prescribed in subdivision (e), the
10 Department of General Services shall sell the land or otherwise
11 dispose of the same in accordance with Section 11011.5. The
12 Department of General Services shall report to the Legislature
13 annually, with respect to each parcel of land authorized to be sold
14 under this section, giving the following information:

15 (1) A description or other identification of the property.

16 (2) The date of authorization.

17 (3) With regard to each parcel sold after the next preceding
18 report, the date of sale and price received, or the value of the land
19 received in exchange.

20 (4) The present status of the property, if not sold or otherwise
21 disposed of at the time of the report.

22 (g) Except as otherwise specified by law, moneys received
23 from any property disposition, including the sale, lease, exchange,
24 or other means, that is received pursuant to this section shall be
25 paid into the General Fund.

26 For purposes of this section, net proceeds shall be defined as
27 gross proceeds less all costs directly related to the completion of
28 the transaction including, but not limited to, selling costs, transfer
29 fees, commissions, and costs incurred by the Department of
30 General Services.

31 (h) Any rentals or other revenues received by the department
32 from real properties, the jurisdiction of which has been transferred
33 to the Department of General Services under this section, shall be
34 deposited in the General Fund in the account established by
35 Section 15863. Any expenditures required to maintain, repair, care
36 for, and sell this real property shall be paid from the appropriation
37 made by Section 15863.

38 (i) Nothing contained in this section shall be construed to
39 prohibit the sale, letting, or other disposition of any state lands

pursuant to any law now or hereafter enacted authorizing the sale, letting, or disposition.

SEC. 2. Section 11011.1 of the Government Code is repealed.

SEC. 3. Section 11011.1 is added to the Government Code, to read:

11011.1. (a) When land has been declared surplus by the Legislature pursuant to Section 11011, is not needed by any state agency, and is suitable to be used for the purpose of providing housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, the Director of General Services, with the approval of the State Public Works Board, ~~shall~~ *may* offer the land to local agencies within whose jurisdiction the land is located, subject to both of the following:

(1) If the state has held title to the land for seven years or less, the land is not used for the purposes for which it was acquired, and the land is declared surplus land and is not needed by any other state agency pursuant to Section 11011, the state, prior to offering the land to local agencies, shall extend to the individual from whom the land was acquired an offer to purchase the land at current fair market value.

(2) The offer shall extend for 60 days and if not exercised within that period shall be irrevocably terminated.

(b) The land may be transferred to local agencies at a reasonable cost that will enable the provision of housing for persons and families of low or moderate income. The cost may be less than fair market value. The Department of Housing and Community Development shall recommend to the Department of General Services a cost that will enable the provision of housing for persons and families of low or moderate income.

(c) All transfers of land pursuant to this section shall be subject to all of the following conditions:

(1) The local agency has made all of the following findings:

(A) There is a need for the housing in the community.

(B) The land is suitable for development of the housing.

(2) The local agency develops a plan for the housing in accordance with criteria established by the Department of Housing and Community Development, that shall include, but not be limited to, criteria respecting the financial condition of the developer, if the housing is to be developed by a private sponsor,

1 and the cost of the project. The plan shall be approved by the
2 Department of Housing and Community Development.

3 (3) After transfer of the property from the state to the local
4 agency, the property shall be developed as housing for persons and
5 families of low or moderate income. The local agency may lease
6 or sell the property to any nonprofit corporation, housing
7 corporation, limited-dividend housing corporation, or private
8 developer if the local agency determines that a private entity is best
9 suited to develop housing for persons and families of low or
10 moderate income. In authorizing the private development, the
11 local agency shall impose reasonable terms and conditions that
12 further the purposes of this section, that shall include, but not be
13 limited to, continued use of the property for housing for persons
14 and families of low or moderate income for not less than 40 nor
15 more than 55 years. A lessee or purchaser of land pursuant to this
16 subdivision shall agree to limitations on profit in the operation of
17 the property that will benefit the public and assure that the housing
18 provided is within the means of persons and families of low or
19 moderate income. The agreement shall be binding upon successors
20 in interest of the original lessee or purchaser and shall inure to the
21 benefit of, and be enforceable by, the state.

22 (4) The local agency shall assure that the land will be used for
23 the purpose of providing low- or moderate-income housing and
24 shall not permit the use of the dwelling accommodations of the
25 project for any other purpose for not less than 40 nor more than 55
26 years, except as provided in this section.

27 (5) The project shall be commenced within 24 months of the
28 original transfer to the local agency. However, the Department of
29 General Services, in consultation with the Department of Housing
30 and Community Development, may for justifiable cause extend
31 the time for commencement of development for an additional 36
32 months. The aggregate time for commencing development shall
33 not exceed 60 months. The deed or other instrument of conveyance
34 shall specify that, if development has not commenced within that
35 time, the land shall revert to the Department of General Services
36 for disposal pursuant to this section or as otherwise authorized by
37 law.

38 (6) As used in this section, “local agency” means any county,
39 city, city and county, redevelopment agency organized pursuant to
40 Part 1 (commencing with Section 33000) of Division 24 of the

Health and Safety Code, or housing authority organized pursuant to Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code, public district, or other political subdivision of the state, and any instrumentality thereof, that is authorized to engage in or assist in the development or operation of housing for persons and families of low or moderate income, and also includes two or more of those agencies acting jointly pursuant to Part 1 (commencing with Section 6500) of Division 7.

(7) Up to 40 percent of the housing developed on land purchased at below market value pursuant to this section may be housing that is not regulated as to price, rent, or eligibility of occupants only if the purchaser of the land demonstrates that the proceeds from the sale or rental of the housing, in an amount equal to the difference between the fair market value and the actual price paid for the land, is used to reduce prices or rents on other housing units that are made available exclusively to persons and families of low and moderate income.

(d) (1) If a local agency does not comply with the land use requirements prescribed in this section, as determined by the Department of General Services, the Department of General Services may require that the local agency pay the state the difference between the actual price paid by the local agency for the property and the fair market value of the property at the time of the department's determination of noncompliance, plus 6 percent interest on that amount for the period of time the land has been held by the local agency.

(2) If the local agency, with the approval of the Department of General Services, and in consultation with the Department of Housing and Community Development, determines that there is no longer a need for low- or moderate-income housing within the jurisdiction of the local agency and another valid public purpose could be achieved by utilizing the land in an alternative manner, the local agency shall not be required to make any payment to the state for the difference between purchase price and fair market value or interest charges for the period of time the land has been held by the local agency.

(e) Failure to comply with this section shall not invalidate the transfer, sale, or conveyance of the real property to a bona fide purchaser or encumbrancer for value.

1 (f) Where the land is suitable to be used for the purpose of
2 providing housing for persons and families of low or moderate
3 income, as defined in Section 50093 of the Health and Safety
4 Code, and no local agency has acquired the land or is in the process
5 of acquiring the land pursuant to subdivision (a), the Director of
6 General Services, with the approval of the State Public Works
7 Board, shall offer the land for lease or sale to a housing sponsor.
8 The land may be sold or leased at a reasonable cost that may be less
9 than fair market value. The Department of Housing and
10 Community Development shall recommend to the Director of
11 General Services a cost that will enable the provision of housing
12 for persons and families of low or moderate income. All transfers
13 of land pursuant to this subdivision shall be subject to all of the
14 following conditions:

15 (1) The housing sponsor has submitted a plan for the
16 development of the housing pursuant to criteria established by the
17 Department of Housing and Community Development. The
18 criteria shall include, but need not be limited to, standards with
19 respect to the cost of the housing development and the proportion
20 of the housing development to be occupied by persons and families
21 of low and moderate income. Insofar as is practical, the plan shall
22 provide for a mix of housing for all income groups.

23 (2) The housing development shall normally be developed or
24 be under development within 24 months from the time of transfer
25 or lease of the land to the housing sponsor. However, the
26 Department of General Services, in consultation with the
27 Department of Housing and Community Development, may, for
28 justifiable cause, extend the time for commencement of
29 development for an additional 36 months. The aggregate of time
30 for commencement of development shall not exceed 60 months.
31 The deed or other instrument of conveyance shall specify that if
32 development has not commenced within that time, the land shall
33 revert to the Department of General Services for disposal pursuant
34 to this section or as otherwise authorized by law.

35 (3) Transfer of title to the land or lease of the land to a housing
36 sponsor shall be conditioned upon continued use of the property
37 as housing for persons and families of low or moderate income for
38 not less than 40 nor more than 55 years. In accordance with
39 regulations that shall be adopted by the Department of Housing
40 and Community Development pursuant to the Administrative



1 Procedure Act, the Director of General Services shall require that
2 any housing sponsor purchasing or leasing land pursuant to this
3 subdivision enter into an agreement that (A) provides for
4 limitations on profit in the operation of the property that both
5 benefit the public and assure that the housing is affordable to
6 persons and families of low or moderate income, and (B) does not
7 permit the use of the property for purposes other than the provision
8 of housing for persons and families of low or moderate income
9 except as provided in this subdivision. Upon recordation of the
10 agreement in the office of county recorder in the county in which
11 the real property subject to the agreement is located, the agreement
12 shall be binding for a period of not less than 40 nor more than 55
13 years upon successors in interest to the original housing sponsor
14 and shall inure to the benefit of, and be enforceable by, the state.

15 (4) For the purposes of this subdivision, “housing sponsor”
16 means any of the following:

17 (A) A nonprofit corporation incorporated pursuant to Part 1
18 (commencing with Section 9000) of Division 2 of Title 1 of the
19 Corporations Code.

20 (B) A cooperative housing corporation that is a stock
21 cooperative, as defined by Section 11003.2 of the Business and
22 Professions Code.

23 (C) A limited-dividend housing corporation.

24 (D) A private housing developer that agrees to the conditions
25 set forth in this subdivision.

26 (5) Up to 40 percent of the housing developed on land
27 purchased at below market value pursuant to this subdivision may
28 be housing that is not regulated as to price, rent, or eligibility of
29 occupants only if the purchaser of the land demonstrates that the
30 proceeds from the sale or rental of the housing, in an amount equal
31 to the difference between the fair market value and the actual price
32 paid for the land, is used to reduce prices or rents on other housing
33 units that are made available exclusively to persons and families
34 of low and moderate income.

35 ~~SEC. 4. Section 11011.3 of the Government Code is repealed.~~

37 *SEC. 4. Section 11011.3 of the Government Code is amended*
38 *and renumbered to read:*

39 ~~11011.3.—~~

1 11011.10. (a) Any public agency desiring to purchase surplus
2 state real property, as set forth in Section 11011.1, shall give
3 written notice to the Department of General Services of its intent
4 to purchase ~~such real~~ *the* property within 60 days after receipt of
5 the ~~Department of General Services'~~ *department's* written
6 notification of intent to sell the ~~same~~ *property*.

7 (b) If the public agency desiring to purchase ~~such~~ *the* property
8 and the Department of General Services are unable to arrive at a
9 mutually acceptable sales price for the property within 180 days
10 from the date of receipt of notice from the public agency, upon
11 request of the public agency the Director of ~~the Department of~~
12 General Services shall hire an independent third party appraiser
13 mutually acceptable to the agency and the department to appraise
14 the property. If within 10 days after receipt of the appraisal the
15 public agency and the department are unable to arrive at a mutually
16 acceptable sales price, upon request of the agency final
17 determination of the sales price shall be made by the State Public
18 Works Board. The public agency shall bear all costs of the
19 independent third party appraisal whether or not the agency elects
20 to purchase the property. If the agency does purchase the property,
21 the appraisal costs shall be added to the purchase price of the
22 property. If the public agency does not purchase the property, it
23 shall pay the appraisal costs, and the surplus real property may be
24 disposed of in the normal manner.

25 (c) After arriving at a mutually agreeable sales price, the
26 Department of General Services and the public agency ~~will be~~
27 *shall have* allowed an additional 90 days to execute a sales or
28 exchange agreement to purchase ~~such~~ *the* property. In the event an
29 agreement is not executed by the public agency within ~~such~~ *the*
30 90-day period, the Department of General Services may offer ~~such~~
31 *the* property for sale in the normal manner. Should 90 days prove
32 insufficient for the public agency to finance purchase of the
33 property, the Public Works Board for good cause may grant an
34 extension of time to complete the purchase. The 90-day limitation
35 shall be suspended when a bond election is to be held for the
36 purpose of financing the purchase of ~~such~~ *the* property. However,
37 the bond election shall be called and held on the next eligible date
38 and this suspension of the 90-day limitation shall only be extended
39 to the 10th day following the date of the next bond election.

(d) For purposes of this section, written notice shall be deemed given upon proper posting and deposit in the United States mail.

~~Nothing~~

(e) *Nothing* in this section shall prohibit the state from continuing to negotiate with a public agency for the sale of surplus property pursuant to other provisions of this article.

SEC. 5. Section 11011.3 is added to the Government Code, to read:

11011.3. (a) Where land that has been declared surplus by the Legislature pursuant to Section 11011, is to be used for park and recreation purposes, or for open-space purposes, and operated by local agencies at no expense to the state, the Director of General Services with the approval of the State Public Works Board may transfer the land to local governmental agencies at fair market value or at any lesser value under any of the following conditions:

(1) The local public agency has submitted a plan for the use of the property that conforms to the agency's general plan pursuant to Article 5 (commencing with Section 65300) of Chapter 3 of Title 7, and that has been approved by the Director of Parks and Recreation.

(2) The land shall be used according to the plan described in paragraph (1) within a time period determined by the Director of General Services, but no later than 10 years from the date of transfer.

(3) The deed or other instrument of transfer shall provide that the land will revert to the state if the use changes to a use not consistent with park and recreation purposes, or open-space purposes, during the period of 25 years following the transfer.

(b) For the purpose of this section, "open-space purpose" means the use of land for public recreation, enjoyment of scenic beauty, or conservation of natural resources.

SEC. 6. Section 11011.4 of the Government Code is repealed.

SEC. 7. Section 11011.4 is added to the Government Code, to read:

11011.4. Where land that has been declared surplus pursuant to Section 11011 is to be used for school purposes, the Director of General Services with the approval of the State Public Works Board may, notwithstanding any provision of Section 11011, transfer the land to a local school district at less than the fair market

1 value of the land, if the transfer is in the public interest, under the
2 following conditions:

3 (a) The land is suitable for use by a school district as a
4 schoolsite, school administration building site, school warehouse
5 site, or other school use.

6 (b) The land is used by the school district for those purposes
7 before a nonuse fee is required by Section 39015 of the Education
8 Code or a later time that is approved by the State Department of
9 Education, with a reversion to the state if not so used within the
10 time prescribed.

11 (c) The deed or other instrument of transfer shall provide that
12 the land shall revert to the state if the use is changed to a use not
13 consistent with school purposes during the period of 25 years
14 following the sale.

15 (d) The transfer is completed not more than 12 months after the
16 property is declared surplus.

17 SEC. 8. Section 11011.5 of the Government Code is amended
18 to read:

19 11011.5. (a) The Department of General Services or a state
20 agency authorized by the Department of General Services to sell
21 specific surplus state-owned real property, except property
22 acquired for state highway purposes, shall issue an invitation to bid
23 to licensed real estate brokers, in accordance with the State
24 Contract Act (Chapter 1 (commencing with Section 10100) of Part
25 2 of the Public Contract Code), to contract to sell surplus
26 state-owned real property that meets either of the following:

27 (1) The Department of General Services has determined that
28 the use of the real property is not needed by any other state agency,
29 and the land has not been transferred, and no local agency, housing
30 sponsor, or other person has accepted any offer for transfer of the
31 land, pursuant to ~~Section 11011.1~~ *Sections 11011.1, 11011.3, and*
32 *11011.4.*

33 (2) The Department of General Services has determined that
34 the use of the real property is needed by another state agency, but
35 that real property is not transferred within the six-month period
36 described in subdivision (e) of Section 11011.

37 (b) The contract shall be awarded in accordance with the
38 provisions of the State Contract Act (Chapter 1 (commencing with
39 Section 10100) of Part 2 of the Public Contract Code).

1 (c) A bidder may submit a bid that includes a provision for a
2 negotiated commission, not to exceed reasonable and customary
3 brokerage commissions applicable to similar privately owned
4 properties in the area in connection with that sale.

5 (d) If a bid is accepted that provides for a negotiated
6 commission, the contract shall provide that the commission shall
7 be paid only out of the proceeds of the sale before the proceeds are
8 remitted to the State Treasury.

9 (e) Any state properties sold through the services of a broker
10 shall be reported, along with a comparison of the estimated cost
11 savings obtained through the use of a broker, in the annual surplus
12 property report to the Legislature required pursuant to Section
13 11011.

14 SEC. 9. *This act shall become operative on July 1, 2005.*

